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KENAI MID-CONTINENT, INC.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENAI MID-CONTINENT, INC., a
California corporation,

Plaintiff and Counterdefendant,

v.

GREAT BASIN OPERATING, LLC, a
Wyoming limited liability company, and
DOES 1 through 10, inclusive,

Defendants and Counterclaimant.

CASE NO. 1:24-cv-00434-KES-CDB

Assigned to the Honorable Kirk E. Sherriff

STIPULATED PROTECTIVE ORDER
AS MODIFIED

Removal Date: April 11, 2024

1 To expedite the flow of discovery material, facilitate the prompt resolution of disputes over
2 confidentiality, adequately protect material entitled to be kept confidential, and ensure that protection is
3 afforded only to material so entitled, Plaintiff Kenai Mid-Continent, Inc. ("Kenai") and Defendant Great
4 Basin Operating LLC ("Great Basin") (collectively the "Parties"), by and through their respective counsel,
5 and pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, hereby stipulate and agree to the terms
6 of this Stipulated Protective Order (hereinafter "Protective Order" or "Order").

7
8 **1. INTRODUCTION**

9 1.1 Purposes and Limitations. Discovery in this action is likely to involve production of
10 confidential, proprietary, or private information for which special protection from public disclosure and
11 from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties
12 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
13 acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery
14 and that the protection it affords from public disclosure and use extends only to the limited information or
15 items that are entitled to confidential treatment under the applicable legal principles.

16 1.2 Good Cause Statement. This action is likely to involve trade secrets, valuable research,
17 design, development, commercial, financial, technical and/or proprietary information for which special
18 protection from public disclosure and from use for any purpose other than prosecution of this action is
19 warranted. Such confidential and proprietary materials and information consist of, among other things,
20 confidential business or financial information, information regarding confidential business practices, or
21 other confidential research, design, development, or commercial information (including information
22 implicating privacy rights of third parties), information otherwise generally unavailable to the public, or
23 which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules,
24 case decisions, common law, or any foreign privacy laws. Accordingly, to expedite the flow of information,
25 to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately
26 protect information the parties are entitled to keep confidential, to ensure that the parties are permitted
27 reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their
28 handling at the end of the litigation, and serve the ends of justice, a protective order for such information

1 is justified in this matter. It is the intent of the parties that information will not be designated as confidential
2 for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained
3 in a confidential, non-public manner, and there is good cause why it should not be part of the public record
4 of this case. A particularized need for a protective order in this case has arisen on account of Plaintiff Kenai
5 assertion that it cannot produce employment records for current or former Kenai employees, because it has
6 entered into a confidentiality agreement with those employees. That agreement requires Kenai to maintain
7 confidentiality of said employee files, absent a protective order, or other court order mandating disclosure.
8 Kenai has also asserted that the records of drilling operations from former jobs are confidential on the
9 grounds that they contain sensitive business information related to Kenai customers that falls within the
10 ambit of Fed. R. Civ. P. 26. A final class of confidential records has arisen with respect to third party
11 subpoenas. Third party vendors and contractors who performed work relevant to this litigation have
12 claimed that the production of responsive documents would result in the disclosure of confidential business
13 practices and pricing strategies. To resolve these issues a protective order is now necessary.

14 1.3 Acknowledgment of Procedure for Filing Under Seal. The parties further acknowledge, as
15 set forth below in Section 12.3, United States District Court Eastern District of California Local Rules
16 (L.R.) 140 and 141 sets forth the procedures that must be followed and the standards that will be applied
17 when a party seeks permission from the court to file material under seal. Any document that is not
18 confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential
19 portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting
20 only the confidential, privileged, or otherwise protectable portions of the document, shall be filed. Any
21 application that seeks to file documents under seal in their entirety should include an explanation of why
22 redaction is not feasible.

23 2. DEFINITIONS

24 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
25 items under this Order.

26 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
27 stored, or maintained) or tangible things that a Party or Non-Party believes in good faith to be confidential
28 or sensitive, non-public information including, but not limited to, trade secrets, research, design,

development, financial, or commercial information as such terms are used in Fed. R. Civ. P. 26(c), and applicable law interpreting the Rule.

2.3 Counsel (without qualifier): Outside Counsel of Record and In-House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 In-House Counsel: attorneys who are employees of a party to this action. In-House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party. Outside Counsel includes all partners, members, and associate attorneys of such counsel’s law firms who are assisting in the personnel of such counsel who may be assisting counsel of record for the parties in the conduct of this litigation, and all clerks, employees, independent contractors, consultants, investigators, paralegals, assistants, secretaries, staff and stenographic, computer, audio-visual and clerical employees and agents thereof when operating under the supervision of such partners or associate attorneys.

2.10 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in

1 this action.

2 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
3 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
4 retrieving data in any form or medium) and their employees and subcontractors, that are retained by a Party
5 or its counsel.

6 2.13 “CONFIDENTIAL” Material: any Disclosure or Discovery Material that is designated as
7 “CONFIDENTIAL.” Protected material designated as CONFIDENTIAL, shall be limited to sensitive
8 personal information regarding a Party’s or Non-Party’s files on their own employees, trade secrets,
9 confidential commercial information (which is treated by a disclosing Party or Non-Party as such in the
10 ordinary course of business), pricing strategies and information, and the identities and business practices
11 of a Party or Non-Party’s customers.

12 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
13 Party.

14 2.15 Final Disposition: the later of (1) dismissal of all claims and defenses in this Action, with
15 or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals,
16 rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or
17 applications for extension of time pursuant to applicable law.

18 **3. SCOPE**

19 This Protective Order shall govern for pre-trial purposes the handling of all Disclosure or Discovery
20 Material, including documents, depositions, deposition exhibits, interrogatory responses, responses to
21 requests for admissions, responses to requests for production of documents, and all other discovery
22 obtained pursuant to the Federal Rules of Civil Procedure by or from a Party in connection with the Action.
23 The protections conferred by this Protective Order cover not only Protected Material (as defined above),
24 but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,
25 summaries, or compilations of Protected Material that might reveal Protected Material; (3) any testimony,
26 conversations, or presentations by Parties or their Counsel that might reveal Protected Material; and (4)
27 any notes, lists, memoranda, indices, compilations, data analyses, or other information prepared or based
28 on an examination of Protected Material, that quote from or paraphrase Protected Material with such

specificity that the Protected Material can be identified shall be accorded the same status of confidentiality as the underlying Protected Material from which they are made, shall be designated with the appropriate confidentiality legend, and shall be subject to all of the terms of this Protective Order.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Stipulated Protective Order does not govern the use of Protected Material at trial.

4. **DURATION**

Even after Final Disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing, a court order otherwise directs, or an exhibit used or introduced at trial becomes public. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. **DESIGNATING PROTECTED MATERIAL**

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards, *i.e.*, those materials properly considered confidential under Fed. R. Civ. P. 26. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or slow the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
2 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
3 Material that qualifies for protection under this Order must be clearly so designated before the material is
4 disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) For information in documentary form (e.g., paper or electronic documents, but excluding
7 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
8 “CONFIDENTIAL” to each page that contains protected material. If only a portion or portions of the
9 material on a page qualifies for protection, the Producing Party also must clearly identify the protected
10 portion(s) (e.g., by making appropriate markings in the margins).

11 A Party or Non-Party that makes original documents or materials available for inspection need not
12 designate them for protection until after the inspecting Party has indicated which material it would like
13 copied and produced. During the inspection and before the designation, all of the material made available
14 for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the
15 documents it wants copied and produced, the Producing Party must determine which documents, or
16 portions thereof, qualify for protection under this Order. Then, before producing the specified documents,
17 the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains Protected
18 Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party
19 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

20 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
21 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding,
22 all protected testimony.

23 (c) for information produced in some form other than documentary and for any other tangible
24 items, that the Producing Party affix in a prominent place on the exterior of the container or containers in
25 which the information or item is stored the legend “CONFIDENTIAL.” If only a portion or portions of the
26 information or item warrant protection, the Producing Party, to the extent practicable, shall identify the
27 protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time, consistent with the Court's Scheduling Order. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed. And nothing in this Order abridges the right of any Party to seek a modification of the order in the future.

6.2 Meet and Confer. Upon receipt of the written objection, counsel for the Designating Party shall, within ten (10) business days, provide a written response to the objecting Party explaining the basis and supporting authority for the designation. The Parties shall meet and confer in good faith to attempt to resolve the dispute without resort to Court intervention. As part of that process, the Designating Party must assess whether designation of a portion of the material as "Confidential" is a viable alternative to designation of the entire document.

6.3 Judicial Intervention. Pursuant to L.R. 302(c)(1) any challenge brought to a confidentiality designation will be brought before the assigned magistrate judge only after having exhausted the Court's mandatory informal discovery dispute procedures (see Doc. 11 at 4).

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the

challenge.

7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below.

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including In-House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise

1 agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or
2 exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and
3 may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

4 (g) the author or recipient of a document containing the information or a custodian or other
5 person who otherwise possessed or knew the information.

6 (h) to any mediator or settlement officer, and their supporting personnel, mutually agreed upon
7 by any of the parties engaged in settlement discussions.

8 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
9 **LITIGATION**

10 If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure
11 of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

12 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of
13 the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
15 litigation that some or all of the material covered by the subpoena or order is subject to this Protective
16 Order. Such notification shall include a copy of this Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating
18 Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served with the subpoena or court
20 order shall not produce any information designated in this action as “CONFIDENTIAL” before a
21 determination by the court from which the subpoena or order issued, unless the Party has obtained the
22 Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking
23 protection in that court of its confidential material – and nothing in these provisions should be construed
24 as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another
25 court.

26 9. **A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
27 **LITIGATION**

28 (a) The terms of this Order are applicable to information produced by a Non-Party in this action

1 and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this
2 litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should
3 be construed as prohibiting a Non-Party from seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s
5 confidential information in its possession, and the Party is subject to an agreement with the Non-Party not
6 to produce the Non-Party’s confidential information, then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of
8 the information requested is subject to a confidentiality agreement with a Non-Party;

9 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this
10 litigation, the relevant discovery request(s), and a reasonably specific description of the information
11 requested; and

12 (3) make the information requested available for inspection by the Non-Party.

13 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of
14 receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s
15 confidential information responsive to the discovery request. If the Non-Party timely seeks a protective
16 order, the Receiving Party shall not produce any information in its possession or control that is subject to
17 the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order
18 to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its
19 Protected Material.

20 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material
22 to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving
23 Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use
24 its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons
25 to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or
26 persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
27 A.
28

11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. **MISCELLANEOUS**

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with LR 140 and 141.1. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court. It is the burden of the Designating Party to establish its entitlement to maintain any confidential material under seal.

13. **FINAL DISPOSITION**

Within 60 days after the final disposition of this action, as defined in Sections 2 and 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party

(and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Similarly, nothing in this Order shall be understood to require Counsel to search for and delete emails, messages, notes, or similar records, which may contain Protected Material at the conclusion of this action. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: June 16, 2025

/s/ James R. Harvey
Attorney for Plaintiff

DATED: June 16, 2025

/s/ Alayne Opie
Attorney for Defendant

IT IS SO ORDERED.

Dated: **June 17, 2025**


UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on June 17, 2025, in the case of *Kenai Mid-Continent, Inc. v. Great Basin Operating, LLC*, No. 1:24-cv-00434-KES-CDB. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____